IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1096 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
YUNUSBHAI HESENBHAI - Opponent(s)

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Appearance :
Ms DARSHANA PANDIT Ld. APP for Appellant(s) : 1,
MR CHIRAG B PATEL for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 20/12/2007

ORAL JUDGMENT

1. The present appeal has been preferred by the State under sec. 378 of CrPC against the judgment and order dated 31.7.1999 rendered in Criminal Case No.

156 of 1993 by the learned J.M.F.C., Chikhali. The said case was registered against the present respondent for the offence punishable under sec. 7 and 16 of the Food Adulteration Act (for short “PFA Act”) in the Court of JMFC, Chikhali.

2. According to the prosecution case, the Food Inspector – ori. Complainant JB Gohil visited the shop of present respondent on 15.7.1992, situated near Old Bus Stand road, Chikhali and purchased 700 ml orange sharbat and the sample was seized and sealed by the Food Inspector and thereafter the same was sent to the Public Analyst for analysis. Upon receipt of the report, it was found that the sample was adulterated and, therefore, the complaint was filed against the present respondent and, thereafter, the charge was framed against the respondent – accused and he came to be tried. After appreciating the oral as well as documentary evidence, at the conclusion of the trial, learned Magistrate vide impugned judgment and order acquitted the respondent – accused.

3. Learned APP Ms. Darshana Pandit appearing on behalf of the appellant-State has contended that the judgment and order acquitting the respondent is contrary to law and evidence on record and is not proper and it is against the established principle of law. She has also contended that learned trial judge has failed to appreciate the report of the public analyst who is an expert and he has given the said

report under the provisions of PFA Act and Rules. She has contended that the trial court has failed to appreciate the report of the public analyst. She has drawn the attention of this Court to the evidence on record and contended that the said sample was taken in the presence of panch and all the materials are produced on record and the prosecution has proved its case beyond reasonable doubt, yet the trial court has failed to appreciate the oral as well as documentary evidence and the judgment and order of the trial court is not proper and the trial court has wrongly acquitted the present respondent – accused.

4. Mr. Patel learned advocate appearing on behalf of the present respondent-accused has contended that orange sharbat which was found in the possession of the present respondent, the complainant has sealed the sample of orange sharbat, but he has not followed the provisions of Rule-14 of the Act. He has also contended that Rule-14 is mandatory in nature. He has also contended that the sample bottles were not cleaned by the complainant and helper of the complainant was not examined. He has also contended that panch witness turned hostile and prosecution has failed to prove that the sample bottles were cleaned as per the provisions of Rule -14 of the Act and prosecution has not examined the main witness (helper of the complainant). So, the prosecution cannot prove that he has followed the provisions of Rule-14 of the Act. It is also contended that as per the provisions of law is concerned, as per the definition in

Appendix-A 16.3, in the present case, total soluble solid was found 60% less in analysis report and supposed Sharbat is prepared then 25% of total solid is required and the public analyst has applied 16.03 norms in his report. He has also contended that public analyst has mentioned orange colour but in his report, it was not found. He has also contended that the sharbat cannot be served without water and ice. So, the sharbat is a raw-material and it cannot be sold directly. He has relied upon the judgment of this Court reported in ***1995(2) GLR P. 1099 in the case of State of Gujarat vs. Sohanlal Trikamchand Shah & Ors.,***

5. I have gone through the papers produced in the case and also gone through the evidence led before the trial court as well as the expert opinion and the observation made by the learned trial judge in his judgment. It is true that in the said trial, the prosecution has failed to establish that whether the sharbat from which sample was taken is a material for sale or not. It is true that sharbat cannot be served without adding water and ice. It is also appears from the papers that the helper of the complainant was not examined by the prosecution. It is true that prosecution has failed to establish that the sample bottles were cleaned by the complainant as per the provisions of Rule-14 of the Act. It is true that the panch witness who is an independent witness, turned hostile before the trial court. Having regard to the facts and circumstances

of the case, I have found that Rule – 14 of the PFA Rules, 1955, is mandatory and it is the duty of the prosecution to prove by leading positive evidence that bottles were cleaned and dried before the sample was taken by the Food Inspector. It is, therefore, the duty of the prosecution to prove beyond reasonable doubt that all ingredients or provisions that are to be proved as per law and especially provisions which are mandatory in nature have got to be proved beyond reasonable doubt. It is very clear from the said Rule that sample of said sharbat for the purpose of analysis should be taken in clean and dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dry substance, entrance of moisture and should be carefully sealed. In the present case, this Court has found that independent panch witness turned hostile before the trial court and the helper of the complainant was not examined. So, prosecution is failed to prove that the prosecution has followed the mandatory provisions of Rule-14 of the PAF Rules. In my view, the prosecution has failed to establish that the said sharbat is injurious to health.

6. It is settled legal position that in acquittal appeal, the Appellate Court is not required to re-write the judgment or to give fresh reasonings when the Appellate Curt is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement

with the reasons given and findings recorded by the trial court while acquitting the respondents – accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court at this Stage. Hence, this appeal requires to be dismissed.

7. In the result, the Appeal is hereby dismissed. The impugned judgment and order dated 31.7.1999 passed by the learned Judicial Magistrate First Class, Chikhali in Criminal Case No. 156 of 1993, acquitting the respondent – accused, is hereby confirmed.

(Z.K. SAIYED, J.)

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